

REMARKS

FORMAL MATTERS:

Claims 40 and 42-46 are pending after entry of the amendments set forth herein.

Claims 1-39 and 41 are canceled without prejudice.

Claims 42 and 43 are amended to change their dependency in view of the cancellation of claim 41.

No new matter is added.

REJECTION UNDER §103(A)

Claims 40, 42, 44 and 46 were rejected under 35 U.S.C. §103 as unpatentable over Grassme et al. in view of Albouz et al. and further in view of Daines.

The rejection is traversed as applied and its reconsideration requested in view of the attached certified English translation of the priority document showing a priority date of the present application which is prior to the publication date of the Grassme et al. reference.

The Grassme et al. reference is clearly the basis for the rejection and without the Grassme et al. reference the rejection should be reconsidered and withdrawn.

SECOND REJECTION UNDER §103(A)

Claims 43 and 45 were rejected under 35 U.S.C. §103 as unpatentable over Grassme et al. in view of Albouz et al. and further in view of Daines and further in view of Bilgi et al.

The rejection is traversed and its reconsideration requested in view of the attached certified English translation of the priority document.

The Grassme et al. publication is dated March 2003. The present application has a priority date of August 23, 2002 based on the original application filed in Germany. The English language PCT filing did not occur until August 21, 2003 followed by the national phase filing of this application in the United States on February 18, 2005. Thus, to establish the earlier priority date of August 23, 2002 based on the German patent application Applicant has attached a certified English translation of German patent application 102 39 531.4 filed August 23, 2002. The attached English translation of the German application is certified as being an accurate translation. The English translation supports the currently

pending claims. In view of such reconsideration and withdrawal of the rejection is respectfully requested.

ADDITIONAL ARGUMENTS

The cited prior art does not teach the use or even the potential use of any antidepressants as inhalation drugs for treating cystic fibrosis. The best the prior art could provide is some unrelated data that suggests the use of antidepressants systemically to treat diseases which diseases are not related to cystic fibrosis. Based on the prior art it can not be concluded that antidepressants will be effective when administered by inhalation to treat cystic fibrosis. In view of such reconsideration and withdrawal of the rejection is respectfully requested.

CONCLUSION

Applicants have attached a certified English Translation of the original German application upon which the current application is based and to which the current application claims priority. In view of this document the Grassme et al. publication is not prior art with respect to the present application. The cited prior art does not disclose a method of treating cystic fibrosis by inhaling an antidepressant. In view of such the rejections should be reconsidered and withdrawn.

Applicant submits that all of the claims are in condition for allowance, which action is requested. If the Examiner finds that a telephone conference would expedite the prosecution of this application, please telephone the undersigned at the number provided.

The Commissioner is hereby authorized to charge any underpayment of fees associated with this communication, including any necessary fees for extensions of time, or credit any overpayment to Deposit Account No. 50-0815, order number AERX-134.

Respectfully submitted,
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Encl. Certified English Translation of
German Patent Application 102 39 531.4
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